IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 534 OF 1990

The State of Maharashtra] ..Appellant

versus

1. Shivram Maruti Jadhav]
   47 years]
2. Sidgonda Maruti Jadhav]
   26 years]
3. Babu Janu Nalavade,]
   21 years]
4. Dinkar Maruti Chavan alias]
   Sawant, 35 years]
5. Bhimrao Krishna Jadhav]
   35 years]
6. Balu Maruti Chavan]
   22 years]
7. Ramu Krishna Jadhav]
   36 years]
8. Ananda Bhimrao Jadhav]
   20 years]
   All residing at Budalmukh]..Respondents
   Taluka Chikodi, Dist:Belgaum] (Ori.Accused)
   (Karnataka State)]

Dr. F. R. Shaikh for the Appellant - State.

Mr. N. J. Patil for the Respondents - Original Accused Nos. 1 to 3, 5, 7 and 8.

CORAM : D. G. DESHPANDE, &
S. R. SATHE, JJ.

DATE : 6TH MARCH, 2007.

ORAL JUDGMENT : (Per. D. G. DESHPANDE, J.) :

1. Heard learned APP for the Appellant - State

and Mr. N. J. Patil for the Respondents - Original Accused Nos. 1 to 3, 5, 7 and 8.

2. This appeal is filed by the State against acquittal of the accused for offences under Sections 147, 148, 323 r/w. 149 and 326 r.w. 149 of Indian Penal Code. The judgment of the acquittal being delivered by JMFS, Kagal, by judgment dated 10.4.1990.

3. As per the prosecution case, all the accused and complainant come from same village Budalmukh in Chikodi Taluka. Accused and complainant are relatives excluding accused Nos. 4 and 6. The incident occurred on 19.2.1986. On that day at about 8 a.m. the complainant along with his servant Babu Sarang were going to Linganoor in a bullock cart. Bullock cart was belonging to one Ananda Kadakane and it was loaded with tobacco. When they reached the shed of one Lad, in the area of Linganoor, all the accused came suddenly from that shed, obstructed the bullock cart. Servant Babu Sarang was driving the bullock cart and the complainant was by his side. Accused No.2 - Sidgonda stopped the bullock cart, gave a stick blow

to the bullock as a result of which the bullock turned round. Accused No.3 Baba Nalavade caught hold of the complainant Shamrao, pulled him down, accused No.1 Shivram thereafter sat on the chest of the complainant Shamrao and took out a pen knife and inflicted direct blow on right eye with the said pen knife.

4. Obviously, complainant Shamrao received a bleeding injury to his eye. His servant Babu Sarang was trying to separate accused No.1 Shivram from the complainant Shamrao and was trying to take out pen knife from the hands of accused No.1 Shivram but at that time accused No.2 Sidgonda gave a stick blow on his head. Babu Sarang got frightened and fled away. Complainant also freed himself and ran towards the outpost of Linganoor. Prior to that i.e. before complainant reached the said out post. Babu Sarang had reached the police and informed P.W. 8 Anandrao Done that complainant Shamrao Jadhav was likely to be killed and that his eyes have been taken out near the hut of Lad. P.W. 8 Anandrao immediately started to go to the spot of incident. On way he met the complainant who was in agony and suffering due to severe injury to the eye. Anandrao asked the

complainant to go to the outpost then he went to the spot of incident and he found accused were running away from the spot but he could not catch them.

5. After return to the out post, P.W. 8 Anandrao sent complainant to Chikhali dispensary along with one N.D. Kumbhar. At about 10 to 10.30 a.m. he received a call from dispensary to the effect that complainant was serious and he had to be referred to C.P.R. Hospital, Kolhapur. When in the dispensary he was examined by P.W. 3 Dr. Bhosale, he opined that there is a grievous injury to the right eye-ball causing loss of vision due to incised perforating injury appearing in medical certificate Exhibit 55. Then P.W. 8 went to Chikhali Dispensary, reduced in writing the oral complaint vide Exhibit 50 in the presence of medical officer and thereafter complainant was referred to C.P.R. Hospital, Kolhapur, along with P.W. 3 Arvind Dharmaraj Bhosale. Thereafter P.W. 8 Anandrao Done carried out the investigation, prepared spot panchnama, recovered blood stained earth from the spot. In the meantime at the hospital complainant was operated by P.W. 7 Dr. Chandrashekhar at Kolhapur. Thereafter accused were arrested from

village B-Pangire. They were spotted and seen by P.W. 9 Fakirgaunda P.I. On seeing him, accused started running away but they were surrounded and arrested. Sticks were seized from accused Nos. 5 to 8, blood stained knife was seized from accused No. 7 Ramu Jadhav. Statements of witnesses were recorded and then charge sheet came to be filed. The defence of the accused was of total denial and false implication. Prosecution examined 11 witnesses. The trial court disbelieved the case of prosecution and acquitted the accused. Hence, this Appeal by the State.

6. The learned APP contended that the judgment of the trial court is perverse, as the findings are totally baseless and wrong. He contended that when the witness of the assault i.e. complainant was alive and has deposed about the incident and he is supported by his servant and other dependent circumstances, then there was no reason for the trial court to acquit the accused. Some of the reasons given by the trial court in acquitting the accused are that there is no explanation why the police did not seize the bullock cart and did not bring the evidence regarding disposal of tobacco in

the said bullock cart, no reason why the blood stained earth and the knife were not sent to the C.A. why the blood stained clothes of complainant P.W.1 Shamrao Jadhav and his servant P.W. 2 Babu Sarang were not recovered and why Babu Sarang was not sent for medical examination. We are totally in disagreement with these observations. The judgment of the trial court is totally perverse, atleast so far as it relates to accused Nos. 1 to 3.

7. The main evidence of the prosecution is obviously the complainant Shamrao Jadhav - he is examined as P.W. 1. He has stated about the manner in which he was assaulted by these accused, how he received injury, how his servant by the side witnessed the incident, how he went to the police station, was sent to hospital, was operated upon and how he lost vision of the right eye due to the injury inflicted by means of knife by the accused. The complainant also stated in addition to the above vital facts that he was held by all the accused when accused No.1 Shivram inflicted the blow on the right eye. In the cross examination he identified the knife and stick also. So far as actual incident is concerned, the defence could not dislodge the

complainant from story given by him. There are no omissions or contradictions in respect of this part of the story. In the cross examination however P.W. 1 has admitted that he was having strained relationship with the accused due to political rivalry, that he was prosecuted for burning S.T. bus, that he was prosecuted for burning the house, set ablaze house and panmala of Bhimrao Jadhav for breaking the pipe line and that Babu Sarang was co-accused with him. He also admitted that Dinkar Maruti Chavan had filed a criminal case against him in Chikodi Court for breaking the electric motor and cutting the coconut trees. He also admitted that one Kumbhare had made complaint against him for demolition of the house constructed by the Government for Kumbhare and that accused No.1 had filed injunction suit against him restraining him from taking water from the well. So far as incident is concerned, cross examination starts from paragraph 12. Certain omissions were brought on record from his evidence i.e. he did not tell the police during his statement that accused No.2 Sidgonda came and gave stick blow to the bullock due to which bullock turned around. He did not tell the police that accused No.3 Baba Nalavade caught his

hand and pulled him on the ground; he also did not tell the police that accused No.1 Shivram sat on his chest and took out a pen knife from his pocket or that all the accused held him while accused No.1 was assaulting him. Then in cross examination he further admitted that apart from accused No.1 no other person had assaulted him and accused No.2 Sidgonda gave him a stick blow after accused No.1 inflicted knife blow on his eye. P.W. 1 Shamrao is corroborated by P.W. 2 Babu Sarang servant of P.W. 1. He has stated that on that date and time he was accompanied by P.W. 1. There were tobacco bags in the bullock cart and when they reached near the shed of one Lad at 9.00 a.m. all the accused came there out of the shed, accused No.2 Sidgonda gave a stick blow on the back of the bullock. Due to the blow, the bullock turned backward and the yoke on their neck was loosened. P.W. 1 Shamrao was sitting on his left side. Accused No.3 Babu Nalavade pulled the complainant down on the ground and all the accused felled him. At that time he jumped from the bullock cart and told the accused not to beat when accused No.2 Sidgonda hit him with the stick on his head. He further states that accused No.1 Shivram was piercing the pen knife in the right eye of the

complainant. He got frightened and fleed away from the spot to the Linganoor out post which was about 2 and 1/2 kms. He told the police what has happened, then the police left for the spot of incident but in the meantime P.W. 1 Shamrao also came there. He was sent for medical treatment. The evidence of this witness was challenged on the ground that even though witness has stated that he had blood injury on the head he was not referred to the doctor nor his blood stained clothes were recovered. Certain omissions were brought out in the cross-examination that he did not tell the police that accused No.2 gave stick blow on the back of the bullock, due to which bulluck turned; about the complainant sitting on his left side and accused No.3 pulling him down. He was confronted with his previous statement wherein he has admitted that all the persons came and caught the complainant and fell him down. Nothing much is brought out in the cross examination and there are no reasons to disbelieve him.

8. So far as medical aspect of the matter is concerned, prosecution examined P.W. 3 Dr. Arvind Bhosale. He examined complainant Shamrao and found following injuries :

Incised perforating injury on the right eyeball and upper cyclid.

Description of cyclid injury :- edges clear cut vehicle 3 c.m. x 1 1/2 c.m. Muscous membrance deep bleeding present.

Corneal injury :- edges clear cut coraid procruding 1/2 c.m. x 1/4 c.m. Bleeding present light reflex absent.

(2) incised wouden the left upper cyclid cross incision vehicle wound :- edges clear cut 2 c.m. x 1/2 c.m. bleeding plus, muscal layer deep 1/3 Horizontal wound :- 3 c.m. x 1/2 c.m. muscle deep bleeding plus.

(3) incised wound in the 1st inter digition space at the base of left thumb. Curved. bleeding present 3 c.m. x 1/2 c.m. x 1/4 c.m. muscle deep."

He stated that the injury to the eye was grievous. There was loss of vision due to incised perforating injury due to sharp cutting instrument. He proved certificate Exhibit 55. There is nothing in the cross-examination to disbelieve this witness. He denied the suggestion that stone having sharp border cannot cause above injury but if the stone is sharp and cutting object then above injury is possible. He denied the suggestion that a finger nail could cause such an injury. These suggestions are hypothetical with no basis of reality. Nothing is suggested to P.W. 1 Shamrao and P.W. 2 Babu Sarang that the place where P.W. 1 Shamrao fell there were

sharp cutting stones and P.W. 1 Shamrao fell on one of the stone. P.W. 1 Shamrao and P.W. 2 Babu Sarang are supported by P.W. 8 Anandrao Done. He has stated that on 19.9.1986 he was at Linganoor outpost as police head constable at about 9 a.m. P.W. 2 Babu Sarang came running and told that complainant Shamrao is likely to be killed and his eyes have been taken out by accused No.1 Shivram and others near the hut of Lad. Then P.W. 8 started going to the spot on his motorcycle. On way he met complainant (P.W. 1) Shamrao, he was coming running catching his right eye. P.W. 8 asked him to go to the outpost and proceeded to the spot to see the situation. He saw the accused fleeing from the spot. He made efforts to catch them but did not succeed.

9. P.W. 8 Anandrao Done has stated that he returned to the out post when P.W. 1 Shamrao and P.W. 2 Babu Sarang were present. He sent the complainant P.W. 1 Shamrao to Chikhali dispensary. Then he learnt that from Chikhali dispensary he was to be referred to C.P.R. Hospital, Kolhapur. He therefore immediately went to Chikhali Hospital along with one constable and recorded statement of

the complainant Shamrao FIR Exhibit 50. He prepared occurrence report on the basis of the statement of the complainant and then accordingly offence was registered at Murgud police station. It is at Exhibit 52. He then proceeded to the spot, prepared panchnama, spot was shown by P.W. 2 Babu Sarang. Blood stained earth was seized from the spot. He recorded statement of witnesses. There is nothing in the cross-examination to disbelieve this witness.

10. One more witness is examined to prove the recovery of knife at the instance of accused No. 7 Ramu Krishna Jadhav. It is a knife having 16 cm. in length and handle of the knife was 9 c.m. There were dry blood stains on the knife.

11. P.W. 9 Fakirgaunda S. Gaunder has stated that on 28.2.1986 he was working as C.P.I. Chikodi. The Nipani Rural Police Station comes under his jurisdiction. He got information that the accused who were required in this case were roaming in the village B-Pangire. Then he went to the spot, watching the movements of the accused, they tried to flee but police party surrounded them and apprehended them. They were brought to Nipani Rural

Police Station and arrested. Personal search of the accused was taken, stick was recovered from the accused Bhima Krishna Jadhav, one blood stained knife from Ramu Krishna Jadhav and another stick from Balu Maruti Sawant. Panchnama was prepared and arrest panchnama was also prepared separately. About recovery of the knife, it was panchnama Exhibit 81 and he identified the pen knife as Article 2 to be the same. About recovery of sticks from Bhima Krishna Jadhav and Balu Maruti Sawant, panchnamas were Exhibits 80 and 82. He handed over the accused along with the record of investigation to PSI Murgud who was present in Nipani Rural Police Station. In the cross-examination witness admitted that blood stains were present on the knife Article No.2 but he did not get the chemical test done. It is this admission which is being strongly used by the Advocate for the Accused to contend that if the incriminating article knife was not sent to the C.A. to verify whether it had blood stains then it has a lacuna in the prosecution case, the benefit of which is required to be given to the accused. We are not in agreement with this argument. It is true that police officers have erred in not sending the knife to C.A. but there are no reasons to disbelieve P.W.

1 and P.W. 2 and this witness in particular about the seizure of the knife from the concerned accused i.e. Ramu Krishna Jadhav. In the cross-examination of this witness also there is nothing to create doubt about the testimony that he arrested the accused at the date time and place and in the search he found the aforesaid incriminating articles.

12. The most important thing that weighs with the prosecution is that offence is proved by P.W. 1 and P.W. 2 and this witness. The fact that they were found at different place than the ordinary place of residence, also supports strongly the case of the prosecution that they are the assailants.

13. Learned Advocate for the accused however tried to contend that there are many omissions and contradictions in the evidence of P.W. 1 and P.W. 2, but all those omissions and contradictions are minor, they do not materially affect the case of the prosecution or the evidence of these two witnesses e.g. Shamrao - P.W. 1 admitted that it did not happen that all the accused had assaulted him and P.W. 2 Babu Sarang at one and the same time as per the portion marked ’C’ of his statement. He also

stated that it did not happen that all the accused persons assaulted Babu Sarang and that question marked 'A' in his statement, was not correctly recorded. This kind of omissions or contradictions do not help the accused at all in view of the positive clear cut evidence of P.W. 1. Similar is the case in the case of evidence of P.W. 2 Babu Sarang. P.W. 2 admitted that it did not happen that he did not come with the complainant near the locality of Nana Lad, portion marked 'A' in his statement was not correct. He also admitted that it did not happen that all the accused persons came and caught the complainant and fell him on the ground, as portion marked 'B' of his statement which was not correct. These omissions or contradictions also do not affect the credibility of this witness when in particular he is fully supported by the constable P.W. 8 Anandrao Gopal Done.

14. This is therefore a case where the prosecution has succeeded in proving the guilt of accused Nos. 1, 2 and 3. The judgment of the trial court is perverse so far as it relates to these accused and therefore this appeal is required to be allowed as against Accused Nos. 1, 2 and 3 are

concerned.

15. In the result, we pass the following order:

ORDER

. Appeal is partly allowed.

. Acquittal of Accused Nos. 4 to 8 is maintained and upheld.

. Accused Nos. 1, 2 and 3 are convicted under Section 326 read with 34 of IPC and sentenced to suffer R.I. for five years each with fine of Rs.3,000/- (Rupees Three Thousand) each in default R.I. for six months each. Accused Nos. 1, 2 and 3 to surrender before the trial court within four weeks from today. If they fail to surrender, the trial court to take steps to take them in custody and sent them to jail to undergo the sentence.

(D.G. DESHPANDE, J.)

(S. R. SATHE, J.)